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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 95-1181-C - ORDER NO. 96-243 ✓
APRIL 23, 1996

IN RE: Robert W. Ashby,)	
)	
Complainant,)	ORDER
)	ON
vs.)	HEARING
)	
South Carolina Net, Inc.)	
)	
Respondent.)	
)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the complaint of Robert W. Ashby (Mr. Ashby) against South Carolina Net, Inc. ("S.C. Net" or the "Company"). Mr. Ashby alleges that S.C. Net improperly switched his presubscribed interexchange carrier ("PIC") to S.C. Net without Mr. Ashby's authorization or approval. Additionally, Mr. Ashby asserts that S.C. Net incorrectly charged him for a direct dialed telephone call made to Guyana, Africa, at a time he could not have placed the call.

A hearing was held on this matter on March 27, 1996, at 11:00 a.m. in the offices of the Commission, with the Honorable Rudolph Mitchell, Chairman, presiding. The Complainant, Robert W. Ashby, appeared pro se, and presented his own testimony. W. J. Jordan, president and CEO of S.C. Net, also appeared pro se and presented

his testimony. The Commission Staff was represented by Catherine D. Taylor, Staff Counsel, and Florence P. Belser, Staff Counsel.

Mr. Ashby presented testimony regarding his complaint. He stated that the business office of Dale Valley Mobile Home Park, owned by Mr. Ashby, received and processed a fifty dollar (\$50.00) check from S.C. Net dated January 16, 1995, which was payable to the order of Dale Valley Mobile Home Park. This check was endorsed by a rubber stamp. The stamped endorsement read in part "For Deposit Only Dale Valley Park" and included the depositor bank's name, location, and the business' account number. The check was deposited into the Dale Valley Mobile Home Park's account. Mr. Ashby stated that he did not recall stamping the check but added that he regularly receives \$50.00 checks as payment for the rented mobile home lots. He testified that he did not intend to switch his PIC. He further stated that at some point between late January, 1996, and June, 1996, he realized that this check which had been deposited was not a check received in the ordinary course of business, and therefore he moved the money into a miscellaneous account.

According to his testimony, Mr. Ashby received a billing from the Company for the return of the \$50.00 check due to breach of the long distance agreement. Additionally, he was billed by S.C. Net for a call placed to Guyana, Africa, purportedly on May 21, 1995, at 5:45 a.m. in the amount of \$5.62. Mr. Ashby then said that it was at this time that he realized that S.C. Net had become his long distance carrier. Mr. Ashby then filed his complaint with the

Commission because (1) he felt that the mailing of the check to potential customers is a misleading and perhaps unethical business practice; (2) the practice of allowing a deposited check with a stamped endorsement to serve as a "contract" to bond the depositor to a new interexchange carrier agreement is a poor and perhaps unethical business practice; (3) the "rubber stamp" endorsement of the check was insufficient authorization of signature to bind Mr. Ashby to a new interexchange carrier; and (4) he could not have made the disputed call to Guyana, Africa, for which he was charged. Regarding the disputed call, Mr. Ashby testified that he was in North Carolina at the time the call was made on May 21, 1995, at 5:45 a.m. He stated that no other individuals would have had access to the Dale Valley Mobile Home Park office at that time either. Lastly, Mr. Ashby stated that he changed his interexchange carrier in October, 1995, and does not recall intentionally changing carriers before that time.

W. J. Jordan of S.C. Net then presented his testimony on behalf of the Company. S.C. Net prefiled with the Commission a copy of the check which Mr. Ashby deposited. The check was attached by perforated edge to a letter signed by W. J. Jordan which explained S.C. Net's offer to the customer. The letter stated that a potential small business customer could cash the check if it would try S.C. Net's long distance services for six months. By endorsing and cashing the check, the customer agreed to allow S.C. Net to provide long distance services for the business's line for a six month period. The reverse side of the check

contained language which explained that a "signature" endorsing the check authorized S.C. Net to switch that business's long distance service to S.C. Net for a minimum six month period. The front of the check stated that the endorsement of the check would switch the customer to S.C. Net's long distance services.

Mr. Jordan testified additionally that the company billed Mr. Ashby for the Guyana call and for refund of \$50.00 incentive check. He stated that the records of BellSouth Telecommunications, Inc., reflected that a direct dialed call was placed from the telephone at Dale Valley Mobile Home Park to Guyana, Africa, on May 21, 1995, at 5:45 a.m. Further, he testified that the company demanded return of the \$50.00 because Mr. Ashby switched his presubscribed interexchange carrier before the expiration of the sixth month time period required by the agreement with S.C. Net. Mr. Jordan stated that he felt the check and its attached letter complied with all S.C. Public Service Commission and FCC rules and regulations.

This matter now comes before us for adjudication. We feel here that the pivotal factor of the case centers on whether S.C. Net's inducement offer, check, and letter of authorization were proper, and whether Mr. Ashby's stamped endorsement of "Dale Valley Mobile Home Park" was sufficient to serve as his authorizing signature. Based on the testimony and evidence presented in the case, we find that there were no violations of state or federal regulations by S.C. Net in utilizing and issuing the letter of authorization and check together. Further, we find that the stamped endorsement served as a signature upon which S.C. Net could

rely in switching long distance services. Although the stamp may have been applied inadvertently, the \$50.00 should have been returned to the Company if Mr. Ashby did not desire that S.C. Net serve as his long distance carrier. In light of the conflicting testimony concerning whether Mr. Ashby fulfilled the six month obligation required by S.C. Net, we conclude that he must return the \$50.00 to S.C. Net.

The facts surrounding to call the Guyana, Africa, are in dispute. The Commission has weighed the evidence, and we rule in favor of Mr. Ashby and order the Company to cancel the charges for this disputed call and any interest owing for which S.C. Net may have billed Mr. Ashby.

This Order shall remain in full force and effect until further Order by the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)